HABIYAKARE v. GAHONGAYIRE N'UNDI (1)

[Rwanda URUKIKO RW'IKIRENGA – RCAA0009/14/CS (Mugenzi, P.J., Gatete na Karimunda, J.) 3 Gashyantare 2017]

Amategeko agenga imiburanishirize y'imanza mbonezamubano – Urupfu rw'umwe mu bashakanye baburana mu rubanza – Ufite inshingano zo gukomeza urubanza igihe abashakanye bafite inyungu zibangamiranye mu rubanza rumwe rurimo n'undi muburanyi – Kugira ngo umuburanyi atange ikirego agomba kugaragaza inyungu kandi igomba kugumaho kugeza urubanza rurangiye – Iyo umwe mu bashakanye apfuye, usigaye yegukana umutungo wose ku bw'itegeko bigatuma urubanza ruwushingiyeho hagati yabo rurangira – Uburenganzira bwo kwegukana umutungo bujyana n'inshingano ziwukomokaho bityo uwegukanye akaba ariwe ukomeza urubanza hagati ye n'umuburanyi usigaye kabone n'ubwo yaba yaramuregeye mu kirego kimwe n'uwo bashakanye wapfuye – Itegeko N^{o}21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 2 n'iya 129 – Itegeko N^{o}27/2016 ryo ku wa 08/07/2016, rigenga imicungire y'umutungo w'abashyingiranywe, impano n'izungura, ingingo ya 76, iya 8(2) n'iya 52(3).

Incamake y'ikibazo: Gahongayire, umugore wa Mirimo, yaregeye Urukiko Rwisumbuye rwa Nyarugenge asaba ko amasezerano y'ubugure bw'inzu Milimo yagiranye na Habiyakare ateshwa agaciro kuko inzu yagurishijwe atabitangiye uburenganzira.

Uru Rukiko rwemeje ko ayo masezerano asheshwe, inzu yaguzwe igasubira mu mutungo wa Gahongayire na Mirimo kandi igacungwa na Mirimo wanategetswe gusubiza Habiyakare 80.000.000Frw y'ikiguzi cy'inzu.

Mirimo na Habiyakare bajuririye Urukiko Rukuru bavuga ko Gahongayire yari azi ikorwa ry'ariya masezerano kandi ko inzu yagurishijwe mu nyungu z'umuryango, bityo basaba Urukiko ko yagumaho cyangwa bitakorwa bityo, umuryango wa Mirimo na Gahongayire ugafatanya kwishyura Habiyakare agaciro iyo nzu igezeho mu gihe cy'urubanza.

Urukiko rwajuririwe rwemeje ko urubanza rudahindutse kandi rutegeka ko Habiyakare yishyurwa 80.000.000Frw y'ikiguzi cy'inzu cyumvikanyweho mu masezerano ndetse ko Gahongayire ataryozwa amasezerano atagizemo uruhare.

Habiyakare yajuririye Urukiko rw'Ikirenga, arega Mirimo na Gahongayire avuga ko umutungo wagurishijwe mu nyungu z'umuryango mu rwego rwo kwishyura ideni Mirimo yari afitiye BCR ndetse ko ku cyangombwa cy'ubutaka hari handitseho Mirimo wenyine, ikindi kandi akavuga ko Urukiko ruramutse rubibonye ukundi, yagenerwa agaciro k'iyo nzu kagaragazwa n'inyandiko y'umuhanga(expertise).

Hagati aho Habiyakare yanatanze ikirego mu Rukiko rw'Ubucuruzi avuga ko igihe bagura inzu ivugwa mu masezerano, banaguze Fonds de commerce, icyakora uru Rukiko rwikuraho uru rubanza ngo ruburanishwe n'urukiko rw'Ikirenga hamwe n'ubujurire bwe.

Mu gihe urubanza rwari rutaracibwa, Mirimo yitabye Imana, havuka ikibazo cyo kumenya ugomba gukomeza urubanza nyuma y'urupfu rwe. Kuri iki kibazo Habiyakare avuga ko yumva kuba Gahongayire yeregukanye umutungo wose, akaba ariyo mpamvu ari nawe ugomba guhagararira abazungura ba Mirimo, cyane ko icyo yasabaga ari uko umutungo ugaruka mu mutungo w'umuryango naho abahagarariye Gahongayire bo bakavuga ko bigoranye kuba Gahongayire yahagararira Mirimo kuko inyungu za bombi muri uru rubanza

zitandukanye kandi ko izungura ritari ryatangira kuko amategeko ateganya ko umwe mu bashakanye usigaye yegukana umutungo, izungura rikazaba ari uko nawe apfuye cyangwa yongeye gushaka, urubanza rero rukaba rukwiye gukomeza ku baburanyi bahari, Mirimo atarurimo.

Incamake y'icyemezo: 1. Kugira ngo umuburanyi atange ikirego agomba kugaragaza inyungu, bikumvikana ko iyo nyungu igomba no kugumaho kugeza urubanza rurangiye, yaba itakiriho, n'urubanza rukarangirira aho, bityo kuba Gahongayire atagifite inyungu zo gukurikirana ikirego yari yarareze Mirimo ku bibazo bijyanye n'imitungo, kuko yegukanye imitungo yose ya Mirimo ku bw'Itegeko, nyuma y'uko uyu apfuye, byatumye urubanza hagati yabo rurangira.

2. Uburenganzira bwo kwegukana umutungo bujyana n'inshingano ziwukomokaho, ku rundi ruhande, urubanza rukaba rero rugomba gukomeza hagati ya Habiyakare na Gahongayire nk'uko baburanaga inyungu zibangamiranye na mbere y'urupfu rwa Mirimo.

Iburanisha ry'urubanza rizakomeza hagati y'ababuranyi basigaye.
Amagarama y'urubanza arasubitswe.

Amategeko yashingiweho:
Itegeko N°27/2016 ryo ku wa 08/07/2016, rigenga imicungire y'umutungo w'abashyingiranywe, impano n'izungura, ingingo ya 76, iya 8(2) n'iya 52(3).
Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 2 n'iya 129.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku wa 26/6/2008 Mirimo Gaspard yagiranye amasezerano y'ubugure bw'inzu na Habiyakare Robert, iri mu kibanza N°4593/Kicukiro, kuri 80.000.000Frw yanyujijwe kuri konti ya Mirimo muri BCR (I&MBank) kugira ngo hishyurwe umwenda yari ayibereyemo. Gahongayire, umugore wa Mirimo, yaregeye Urukiko Rwisumbuye rwa Nyarugenge asaba ko ayo masezerano ateshwa agaciro kuko inzu yagurishijwe atabizi.

[2] Mu rubanza RC0249/12/TGI/NYGE, Urukiko rwemeje ko amasezerano yavuzwe asheshwe, inzu yaguzwe igasubira mu mutungo wa Gahongayire na Mirimo kandi igacungwa na Mirimo, uyu agasubiza Habiyakare 80.000.000Frw y'ikiguzi cy'inzu.

[3] Mirimo na Habiyakare buri wese yajuririye Urukiko Rukuru bavuga ko Gahongayire Winnifrida yari azi ikorwa ry'ariya masezerano, bityo ko atasaba ko ateshwa agaciro, basaba Urukiko ko ahubwo yagumaho kuko inzu yagurishijwe mu nyungu z'umuryango, bitakorwa bityo, umuryango wa Mirimo na Gahongayire ugafatanya kwishyura Habiyakare agaciro k'inzu k'uyu munsi, kagaragajwe n'abahanga ka 347.782.150Frw.

[4] Mu guca urubanza RCA0566/012/HC na RCA0581/012/HC, Urukiko rwemeje ko urubanza rudahindutse ahubwo ko Habiyakare agomba kwishyurwa 80.000.000Frw kuko ariyo yumvikanyweho mu masezerano (ingingo ya 263 CCL.III), kandi ko Gahongayire ataryozwa amasezerano atagizemo uruhare.

[5] Urukiko Rukuru rwasobanuye ko nta hagaragara ko Gahongayire yamenye amasezerano avugwa kandi akaba nta kigaragaza ko iyo nzu yagurishijwe mu nyungu z'umuryango, ko ahubwo byakozwe na Mirimo mu rwego rwo kurigisa umutungo w'umuryango nk'uko biboneka mu manza zaburanywe na Gahongayire, asaba ko iriya nzu ivanwa mu mitungo yatanzweho ingwate ku mwenda atazi. Urukiko rwasobanuye kandi ko Habiyakare akwiye kwishyurwa 80.000.000Frw y'ikiguzi kigaragara mu masezerano, kandi Gahongayire akaba atayaryozwa kuko atayagizemo uruhare.

[6] Habiyakare yajuririye Urukiko rw'Ikirenga, arega Mirimo na Gahongayire, ariko atanga n'ikirego mu Rukiko rw'Ubucuruzi rwa Nyarugenge (RCOM0852/14/TC/NYGE) avuga ko mu kugura inzu ivugwa mu masezerano kuri 80.000.000Frw banaguze "Fonds de commerce" kuri 36.000.000Frw, ariko Urukiko rw'Ubucuruzi rurwohereza mu Rukiko rw'Ikirenga, ngo ruburanishirizwe hamwe na RCAA0009/14/CS.

[7] Ku mpamvu z'ubujurire, Habiyakare yavugaga ko umucamanza yagombaga kwemeza ko uriya mutungo wagurishijwe mu nyungu z'umuryango kuko hishyuwe ideni Mirimo yari afitiye BCR, ryari ryafashwe mu bikorwa by'umuryango, akaba kandi yaraguze inzu azi ko ari iy'umuryango kuko ku cyangombwa cy'umutungo hari handitseho Mirimo wenyine. Avuga ko Urukiko rubibonye ukundi, yagenerwa 347.782.150Frw, agaciro kagaragazwa na "expertise", hashingiwe ku ngingo ya 310 CCL.III, asaba indishyi zingana na 3.000.000Frw harimo 2.000.000Frw yo gusiragizwa mu rubanza na 1.000.000Frw y'igihembo cya Avoka.

[8] Ku nzitizi yatanzwe n'uhagarariye Gahongayire yo kutakira ikirego kuko ababuranyi batsinzwe ku mpamvu zimwe mu Rukiko Rwisumbuye no mu Rukiko Rukuru, Urukiko rw'Ikirenga rwafashe icyemezo ku wa 19/02/2016, ko iyo nzitizi nta ishingiro ifite, rwemeza ko iburanisha ry'urubanza rizakomeza, rwongera kuburanishwa ku wa 22/11/2016 no ku wa 14/12/2016, hasuzumwa ikibazo cyo kumenya ugomba gukomeza urubanza, nyuma y'urupfu rwa Mirimo wari ururimo nk'umuburanyi. Habiyakare yari ahagarariwe na Me Munyangabe Henry Pierre, Gahongayire ahagarariwe na Me Rutabingwa Athanase na Me Niyomugabo Christophe.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURWA RYACYO

Kumenya uko urubanza rugomba gukomeza, nyuma y'urupfu rwa Mirimo Gaspard wari umuburanyi muri rwo.

[9] Me Munyangabe Henry Pierre uhagarariye Habiyakare avuga ko nyuma y'urupfu rwa Mirimo, Gahongayire yegukanye umutungo wose, akaba ariyo mpamvu ari nawe ugomba guhagararira abazungura ba Mirimo, cyane ko icyo yasabaga ari uko umutungo ugaruka mu mutungo w'umuryango. Basaba ko hakoreshwa imwe mu nzira ebyiri zishoboka mu gukemura ikibazo, iyo kwemeza ko amasezerano aburanwa yagumana agaciro kayo, iya kabiri ikaba iyo kuba umutungo uburanwa wagarurwa mu muryango wa Mirimo uhagarariwe na Gahongayire, uyu akarangiza inshingano Mirimo yari afite zo gusubiza Habiyakare agaciro k'umutungo uburanwa.

[10] Me Rutabingwa Athanase na Me Niyomugabo bahagarariye Gahongayire, bavuga ko bigoranye kuba Gahongayire yahagararira Mirimo kuko inyungu za bombi muri uru rubanza zitandukanye. Bavuga ko izungura ritari ryatangira kuko amategeko ateganya ko umwe mu bashakanye usigaye yegukana umutungo, izungura rikazaba ari uko nawe apfuye cyangwa yongeye gushaka, urubanza rero rukaba rukwiye gukomeza ku baburanyi bahari, Mirimo atarimo.

UKO URUKIKO RUBIBONA

[11] Ingingo ya 8, igika cya 2, y'Itegeko N°27/2016 ryo ku wa 08/07/2016, rigenga imicungire y'umutungo w'abashyingiranywe, impano n'izungura, iteganya ko iyo uburyo bw'ivangamutungo rusange bw'abasezeranye busheshwe kubera urupfu rw'umwe muri bo, "umutungo wegukanwa n'uwapfakaye, kugeza igihe izungura rikorewe[1]".

[12] Ku byerekeye igihe iryo zungura rikorerwa, ingingo ya 52, igika cya 3, y'Itegeko rivuzwe haruguru, iteganya ko izungura ry'abashyingiranywe ritangira ari uko bombi bapfuye cyangwa umwe yongeye gushyingirwa, usibye igihe itegeko ribiteganya ukundi.

[13] Urukiko rurasanga rero, hashingiye ku biteganywa n'izo ngingo zombi zuzuzanya, nyuma y'urupfu rwa Mirimo, Gahongayire bari barashakanye, bafitanye amasezerano y'ivangamutungo rusange, yaregukanye umutungo wose (patrimoine) wa Mirimo (actif et passif), kandi kuba Gahongayire, akiriho ataranongera gushaka, bikaba bibuza ko izungura ritangira, hakaba rero nta n'abazungura ba Mirimo bahamagarwa mu rubanza ngo barukomeze mu mwanya we.

[14] Urukiko rurasanga ariko, ingingo ya 129 y'Itegeko N°21/2012 ryo ku wa 16/04/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko "iyo urubanza rutaragera igihe cyo gucibwa, Urukiko rukamenya urupfu rw'umwe mu baburanaga, ruhamagara **abafite ububasha bwo kurukomeza**…" aba rero bakaba batakumvikana gusa nk'abazungura byanze bikunze, ahubwo hanarebwa n'undi waba ufite ubwo bubasha.

[15] Urukiko rurasanga, kubera ko nta zungura rya Mirimo ryabaho mu gihe Gahongayire bashakanye akiriho, ataranongeye gushaka, kandi ari nawe wegukanye umutungo wose wa Mirimo nk'uko byibukijwe haruguru, byumvikana ko ariwe wakagombye kugira ububasha bwo gukomeza urubanza mu mwanya wa Mirimo utakiriho, ariko hakavuka ikibazo cyo kuba, inyungu Gahongayire yari akurikiranye mu rubanza zibangamiranye n'iza Mirimo, kandi ari umwe mu bo baziburanaga.

[16] Urukiko rurasanga, ubwo ibyo Gahongayire yari akurikiranyeho Mirimo byashoboraga kuva mu mutungo wa Mirimo, none uwo mutungo wose ukaba waregukanywe na Gahongayire, nta nyungu uyu agifite zo gukomeza urubanza ku byo yari akurikiranyeho Mirimo, kuko, nk'uko ingingo ya 2 y'Itegeko N°21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi ibiteganya, kugira ngo umuburanyi atange ikirego agomba kugaragaza inyungu[2],

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[1] Ni nako biteganyijwe mu gika cya mbere, agace ka mbere, cy'ingingo ya 76 y'Itegeko N°27/2016 ryo ku wa 08/07/2016, rigenga imicungire y'umutungo w'abashyingiranywe, impano n'izungura.

[2] Iyo ngingo iteganya ko ikirego kitemerwa mu rukiko, iyo urega adafite ububasha, inyungu n'ubushobozi bwo kurega.

bikumvikana ko iyo nyungu igomba no kugumaho kugeza urubanza rurangiye, yaba itakiriho, n'urubanza rukarangirira aho.

[17] Urukiko rurasanga rero, kuba Gahongayire atagifite inyungu zo gukurikirana ikirego yari yarareze Mirimo ku bibazo bijyanye n'imitungo, kuko yegukanye imitungo yose ya Mirimo ku bw'Itegeko, nyuma y'uko uyu apfuye, byatumye urubanza hagati yabo rurangira (extinction d'instance).

[18] Ku kibazo cy'inyungu zibangamiranye mu rubanza hagati ya Habiyakare na Mirimo utakiriho, Urukiko rurasanga urubanza rugomba gukomeza hagati ya Habiyakare na Gahongayire wasimbuye Mirimo kubera ko yegukanye umutungo we nk'uko byasobanuwe haruguru, kuko uburenganzira bwo kwegukana umutungo bujyana n'inshingano ziwukomokaho, ku rundi ruhande, urubanza rukaba rugomba gukomeza hagati ya Habiyakare na Gahongayire nk'uko baburanaga inyungu zibangamiranye, na mbere y'urupfu rwa Mirimo.

III. ICYEMEZO CY'URUKIKO

[19] Rwemeje ko urubanza hagati ya Gahongayire Winnifrida na Mirimo Gaspard rwarangiye, kubera urupfu rwa Mirimo;

[20] Rwemeje ko ibyo Habiyakare Robert yaburanaga na Mirimo Gaspard ku ruhande rumwe, na Gahongayire Winnifrida ku rundi ruhande, azakomeza kubiburana na Gahongayire muri uru rubanza;

[21] Rutegetse ko urubanza mu mizi, ku bujurire bwa Habiyakare Robert n'ubwa Gahongayire Winnifrida, ruzakomeza kuburanishwa ku wa 11/04/2017.